

**SPECIAL STATE BANKING BOARD MEETING  
OFFICE OF THE COMMISSIONER  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
2000 SCHAFER STREET, SUITE G  
BISMARCK, NORTH DAKOTA**

**November 28, 2012**

A special meeting of the State Banking Board was held in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota. Chairman Entringer called the meeting to order at 3:00 p.m., Wednesday, November 28, 2012, by conference call.

MEMBERS PRESENT: Robert J. Entringer, Chairman (*Office*)  
Nancy Baerwald, Member (*Cando*)  
Linda Beall, Member (*Velva*)  
Bill Daniel, Member (*Bismarck*)  
Kim Larson, Member (*Casselton*)  
Anita Quale, Member (*Watford City*)  
Tom Stennes, Member (*Harwood*)

MEMBER ABSENT: None

ALSO PRESENT: Aaron K. Webb, Secretary (*Office*)  
Suzette Richardson, Administrative Staff Officer (*Office*)

**APPLICATION FOR CHANGE OF CONTROL**

Assistant Commissioner Webb reviewed his Memorandum dated November 26, 2012, indicating the Department received the change of control application on October 31, 2012, from Philip G. Amundson 2012 Irrevocable Grantor Trust to acquire 38.808% of the voting shares of Beulah Bancorporation, Inc. Assistant Commissioner Webb added that the application was deemed complete on November 2, 2012.

Assistant Commissioner Webb provided that pursuant to North Dakota Administrative Code § 13-02-17-01, notice of the above transaction was published

in the *Hazen Star*, Hazen, ND on November 8, 2012. Assistant Commissioner Webb stated the comment period ended on November 20, 2012, and no comments were received nor were there any requests for copies of the application.

Assistant Commissioner Webb indicated North Dakota Century Code § 6-08-08.1(4), provides that the State Banking Board may disapprove any change of control application if the Board determines that (a) the character, reputation, general fitness, financial standing, and responsibility of the persons proposed as new stockholders, directors, or officers is such that the interests of the other stockholders, depositors, and creditors of the institution and the public generally will be jeopardized by the change in control and management; and (b) the qualifications of management do not include adequate experience with financial institutions or other approved related experience.

Assistant Commissioner Webb pointed out the terms of the transaction are addressed under the application and supporting documentation; adding that ownership in the entity is being transferred from one trust to another newly created trust. Assistant Commissioner Webb explained that as a result of this transaction, voting responsibility will transfer from Philip G. Amundson to Matt W. Amundson, Blair F. Folkens, and A.R. Mixner. Assistant Commissioner Webb noted that A.R. Mixner currently has a controlling interest by virtue of her position as trustee of two other trusts that already own shares of Beulah Bancorporation, Inc.

Assistant Commissioner Webb indicated the Department recommends approval of the change of control application by Philip G. Amundson 2012 Irrevocable Grantor Trust to acquire 38.808% of the voting shares of Beulah Bancorporation, Inc.

Chairman Entringer clarified that Beulah Bancorporation, Inc., owns 100% of the First Security Bank – West, Beulah.

Chairman Entringer explained the creation of the new trust relates to tax planning in anticipation of the expiration of the Bush tax cuts, as well as the replacement of Philip G. Amundson as voting trustee. Chairman Entringer noted that for the purposes of the change of control statute “control” includes anyone who has control, can vote, or has the power the vote more than 25% of the shares of a bank or bank holding company. Chairman Entringer added that based on the foregoing, the change from Philip G. Amundson as trustee to three new trustees resulted in a change of control.

Member Larson questioned the relationship between Lloyd Amundson and Philip G. Amundson, and Chairman Entringer indicated Philip is Lloyd's son, and Matt W. Amundson is Lloyd's grandson.

**It was moved by Member Beall, seconded by Member Quale, and unanimously carried to approve the change of control application for Philip G. Amundson 2012 Irrevocable Grantor Trust to acquire 38.808% of the voting shares of Beulah Bancorporation, Inc.**

## **ITEM FOR DISCUSSION – BOLI WAIVERS**

Chairman Entringer indicated he received a BOLI (bank owned life insurance) request from First Security Bank – West, Beulah. Chairman Entringer explained this bank has a policy that was purchased as an inducement for an individual to remain with the bank. Chairman Entringer explained it was a split dollar policy, whereby if the individual retired part of the policy would be transferred to him; however, if terminated the individual would not receive any portion of the policy. Chairman Entringer indicated according to the North Dakota Administrative Code if the bank does not have a continuing liability for a policy such as this, the bank has no authority to continue to hold the policy. Chairman Entringer indicated that since the employee no longer works for the bank, the bank is requesting a waiver.

Chairman Entringer stated documentation he received from the bank supported the bank's position that the policy was purchased for the split dollar arrangement. Chairman Entringer indicated OCC Interagency Guidance on BOLI allows a bank to purchase a policy for the purpose of funding employee benefits to offset expenses of the bank. Chairman Entringer indicated if this purpose was part of the policy in question, it would be an acceptable reason to continue to hold the policy.

Chairman Entringer mentioned that the bank will be submitting information to the Department as to why it should be allowed to re-justify the reason for purchasing this policy. Chairman Entringer clarified that while the bank's consultant concluded that the OCC Interagency Guidance on BOLI allows re-justification of the reason for purchasing a policy, the Department did not find any support for this conclusion within the Guidance.

Chairman Entringer explained if the bank surrenders this policy there will be huge tax consequences. Chairman Entringer asked for the Board's opinion regarding the request.

Member Beall asked if the bank initially set this up as a deferred compensation policy for this individual. Chairman Entringer explained the policy was drafted so that if this individual remained employed with the bank until retirement a portion of the death benefit would be assigned to his family, which was an inducement to remain employed until retirement. Member Beall added she feels the policy was initially written incorrectly, and Chairman Entringer agreed.

Member Quale asked if the bank has other BOLI policies, and Chairman Entringer indicated there are similar policies on two other individuals employed with the bank.

Chairman Entringer suggested the bank use the earnings from this policy to offset other employee benefits, adding this policy should have originally been set up that way. Chairman Entringer stated he will suggest to the bank president that the other policies be changed as well.

Member Quale stated the policy may be written correctly; however, the justification of why the bank is holding the policy is not correct. Chairman Entringer agreed.

After further discussion, it was the consensus of the Board that Chairman Entringer should make a decision on this matter.

The meeting adjourned at 3:20 p.m.

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Robert J. Entringer, Chairman

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Aaron K. Webb, Secretary